THE HON'BLE MS.JUSTICE G.ROHINI

WRIT PETITION NO.1270 OF 2006

Between:

Smt.Malisetti Padmasri ……..Petitioner

Vs.

The Deputy Commissioner, Endowments Department, Kakinada, East Godavari District and four others.

……..Respondents.

THE HON'BLE MS.JUSTICE G.ROHINI

WRIT PETITION NO.1270 OF 2006

O R D E R:

This writ petition is filed aggrieved by the alleged action of the respondents in proposing to construct a marriage hall in the site belonging to the petitioner situated in Mukhasa Inam No.135 at Tadepalligudem, West Godavari District.

It is stated that by virtue of a will, dated 02.05.1978 executed by Smt. Lakshmi Kanthamma, the property in question along with a temple of Sri Venkateswara Swamy was bequeathed to the mother of the petitioner. The said temple was constructed by the husband of Smt.Lakshmi Kanthamma investing his own money exclusively for the worship of his family. The said temple has never been notified under A.P.Charitable & Hindu Religious Institutions & Endowments Act, 1987 and is being maintained by the family members of Smt.Lakshmi

Kanthamma. The mother of the petitioner by name Smt.Ratna Mala executed a trust deed, dated 03.09.1999 appointing the petitioner as Manager of the said temple. While so, the second respondent-Assistant Commissioner of Endowments issued a publication, dated 21.03.2001 for the appointment of Board of Trustees and an attempt was made to dispossess the petitioner. In the circumstances, the petitioner filed O.S.No.73 of 2001 under section 87 of Andhra Pradesh Charitable and Hindu Religious Institutions Endowments Act, 1987 (For short Act 1987) before the first respondent-Deputy Commissioner of Endowments, seeking a declaration that she is the hereditary trustee of the temple in question and the same is still pending

In the meanwhile, at the behest of the 5th respondent herein, a Kalyana Mandapam was proposed to be constructed in the private land adjacent to the temple in question and a foundation stone was also laid in the third week of December 2005. Having come to know about the proposed constructions, the petitioner made a representation, dated 21.12.2005 to the first respondent requesting to take necessary steps restraining any constructions in the land where the temple is situated, since it is a private temple. Alleging that the request of the petitioner has not been considered but on the other hand, the respondents are taking steps to encroach upon the private land belonging to the petitioner, this writ petition is filed.

A counter affidavit has been filed on behalf of the third

respondent stating that the site claimed by the petitioner, where a Venkateswaraswami temple was constructed is quite different and there is no dispute with regard to the boundaries and the measurements. It is also stated that though a foundation stone has been laid, no construction of Kalyana Mandapam is taken up till today. Though the representation of the petitioner was received, since there is no dispute about the site wherein the temple is situated, the grievance of the petitioner was found to be without any basis, warranting any action.

A separate counter affidavit has been filed by the first respondent denying the allegations made by the petitioner and stating that Sri Venkateswara Swami Temple was declared as public temple and that the petitioner has no *locus standi* to file the writ petition claiming that the temple is a private temple.

Heard the learned counsel for both the parties.

Having regard to the specific case of the respondents in the counter affidavits and in the absence of any material to show that the Kalyana Mandapam is proposed to be constructed on the land belonging to the Temple to which, the petitioner claims to be the Managing Trustee, I do not find any justifiable reason to issue the writ of Mandamus as prayed for. However, the petitioner states that she has paid the requisite amounts vide chalans, dated 13.04.2006 and 07.06.2007 in the office of the fourth respondent for measuring and

fixing the boundaries of Mukhasa Inam No.135 and it would be appropriate to direct the fourth respondent to conduct the survey and to demarcate the lands in question to avoid any further disputes.

The learned counsel for the respondents did not oppose the same.

In the circumstances, without expressing any opinion as to the rival claims made by the petitioner and the respondents with regard to the Temple and the land in question, the writ petition is disposed of with a direction to the fourth respondent to consider the request of the petitioner for survey of Mukhasa Inam No.135 and take appropriate action in accordance with law, within a period of four weeks from the date of receipt of this order. It is made clear that the survey if any conducted for demarcation of the land in question should be made with due notice to all the persons concerned. No order as to costs.

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G.ROHINI J.,

Dt.12.06.2007
c.c.in three days
b/o
tjs